

Use of City Position
Charter Sections 2604(b)(1)(a), (b)(3)
2605

Advisory Opinion No. 94-28 (Revised)

The Conflicts of Interest Board (the "Board") has received a request for an opinion from a member of the City Council as to whether, consistent with the conflicts of interest provisions of Chapter 68 of the City Charter, he may assist a real estate developer (the "Developer") with whom he has a financial relationship, who is interested in developing two parcels of real estate which are located within the Council Member's district. Specifically, he has asked whether he may contact City agencies, other elected officials, community groups or community boards on behalf of the Developer. In addition, the Council Member has asked whether his staff may assist the Developer if he is prohibited from doing so. Finally, the Council Member has asked whether he may be an advocate for the passage of State legislation or

propose local legislation which would assist the Developer.

For the reasons discussed below, it is the Board's opinion that neither the Council Member nor his staff may assist the Developer by contacting City agencies, other elected officials, community groups, community boards or other interested groups or persons on the Developer's behalf. The Council Member may, however, propose or support local legislation which could benefit the Developer, provided that the Council Member discloses his association with the Developer on the official records of the Council. Furthermore, the Council Member may, as a City official, support the passage of State legislation, again provided that he discloses his association with the Developer on the official records of the Council, at the time the matter comes before the Council. He may also advocate to a State official or body the adoption of State legislation, provided that he discloses his association with the Developer to the State official or body before which he appears in support of the legislation.

Background

The Council Member has advised the Board that he is an officer and director of and a minority shareholder in a corporation (the "Corporation") which owns two real estate developments located in upstate New York; that the Corporation is a minority general partner with no management responsibilities in two limited partnerships; that the Developer is a limited partner in the same two developments; and that the Developer is currently interested in developing two parcels of real estate located within the Council Member's district in the City, in a project which is unrelated to the upstate properties or the limited partnerships.

Discussion

A. Contacting Other City Officials and Community Groups

Neither the Council Member nor his staff may contact City officials or community groups on the Developer's behalf because this could create the appearance that the Council Member is using or attempting to use his official position to benefit someone with whom he is associated.

The Council Member has an ownership interest in

the Corporation, and the Corporation is a minority general partner in two limited partnerships in which the Developer is also a limited partner. Since the Council Member has an interest in the Corporation, which is a general partner in two limited partnerships in which the Developer is also a limited partner, the Council Member and the Developer have a business or financial relationship, and they are associated for the purposes of Chapter 68. Charter Section 2601(5) states that persons or firms "associated" with public servants include persons with whom the public servant has a business or other financial relationship and each firm in which the public servant has a present or potential interest. If the Council Member contacts other City officials or community groups on behalf of the Developer, this could create the appearance that the Council Member is using or attempting to use his official position for the advantage of a person or firm with whom he is associated. Charter Section 2604(b)(3) provides that no public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or

indirect, for the public servant or any person or firm associated with the public servant.

The appearance of impropriety would not be diminished if the Council Member's staff contacts other City officials and community groups on the Developer's behalf. Since the staff members are identified with the Council Member, it would still appear that the Council Member was using or attempting to use his position for the advantage of a person or firm with which he is associated. It is thus the opinion of the Board that neither the Council Member nor his staff may contact City officials or community groups on behalf of the Developer.

B. Proposing or Supporting Legislation

As part of his official duties, the Council Member frequently proposes or supports local legislation which could benefit his constituency. In addition, he occasionally votes on Council resolutions in support of or in opposition to the passage of pending State legislation. The Charter recognizes this unique function of elected officials in Charter Section 2604(b)(1)(a), which provides that an elected official

may take an action as a public servant which affects an interest he has in a firm, provided that the elected official discloses such interest to the Board and on the official records of the Council. The Charter Revision Commission (the "Commission") clearly did not intend to prevent elected officials from lobbying on behalf of or voting on legislative proposals which could affect their interests. The Commission stated that, "[r]equiring elected officials to recuse themselves in these situations would prevent them from executing the essential functions they have been elected to perform. Disclosure only is required." See Volume II, Report of the New York City Charter Revision Commission, December 1986 - November 1988, at p. 174.

In this case, the Council Member's proposed actions do not affect an "interest" he holds in a firm, but they could affect a person or firm with which he is "associated."¹ Accordingly, to avoid the appearance of impropriety and to comply with Charter Section 2604(b)(1)(a), the Council Member should disclose his association with the Developer on the

¹ "Interest" means an ownership interest in or a position with a firm. See Charter Section 2601(12).

official records

of the Council if he proposes or supports local legislation which could benefit the Developer.² In

addition, if the Council Member supports, as a City official, the passage of State legislation which could benefit the Developer, he should disclose his association with the Developer on the official records of the Council, at the time the matter comes before the Council. He may also advocate to a State official or body the adoption of State legislation, provided that he discloses his association with the Developer to the State official or body before which he appears in support of the legislation.

Disclosure in this case is also required by Charter Section 2605, which provides that "no public servant shall attempt to influence the course of any proposed legislation in the legislative body of the city without publicly disclosing on the official

² Charter Section 2604(b)(1)(a) requires disclosure not only on the official records of the Council but also to the Board. By requesting an advisory opinion from the Board and thereby notifying the Board of his association with the Developer, the Council Member has satisfied the requirement of disclosure to the Board.

records of the legislative body the nature and extent of any direct or indirect financial or other private interest the public servant may have in such legislation."

Conclusion

It is thus the opinion of the Board that neither the Council Member nor his staff may assist the Developer by contacting City agencies, other elected officials, community groups, community boards or other interested groups or persons on the Developer's behalf.

It is also the Board's opinion that the Council Member may, however, propose or support local legislation or support the passage of State legislation which could benefit the Developer, provided that the Council Member discloses his association with the Developer on the official records of the Council, at the time the matter comes before the Council. He may also advocate to a State official or body the adoption of State legislation, provided that he discloses his association with the Developer to the State official or body before which he appears in support of the legislation.

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